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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its October 11, 2011 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (16)

ALLEGATIONS, FINDINGS & RATIONALE

10-069

1. Misconduct/Procedure – Probation Officer 2 accused the complainant of “sagging” and ordered him to tighten his belt.

Board Finding: Action Justified

Rationale: Probation Officer 2 observed the complainant “sagging” in violation of the Work Project rules and regulations related to dress code. Additionally, Probation Department Policy 103.4 (B) requires that Crew Supervisors observe Public Service Workers to ensure that their general attire is appropriate for doing physical labor. Probation Officer 2 instructed the complainant to pull his pants up and to tighten his belt to ensure that he would be in compliance with the rules. The evidence shows the alleged act did occur, but was lawful, justified and proper.

2. Misconduct/Discourtesy – Probation Officer 3 used abusive language against the complainant.

Board Finding: Not Sustained

Rationale: Probation Officer 2 denies using abusive language or hearing Probation Officer 3 use abusive

language against the complainant. While the complainant admits to using profanity during his exchange with Probation Officer 2, he offered no evidence or witnesses to corroborate his claims that Probation Officer 2 or Probation Officer 3 reciprocated. There is then insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Probation Officer 2 instructed the complainant to leave the work site if he did not like the rules but then “detained” him and demanded his ID (identification) upon departure. Probation Officer 2 did not do this to other crew members who left.

Board Finding: Action Justified

Rationale: Probation Officer 2 denies instructing the complainant to leave the work site; he did so voluntarily. He did, however, request the complainant’s identification for documentation purposes in order to be in compliance with Probation Department Policy 103.4 (B), which requires the Crew Supervisor to know the whereabouts of each Public Service Worker under their charge. This alleged act then did occur, but was lawful, justified and proper.

4. Misconduct/Procedure – Probation Officer 1 asked the complainant to lift his shirt when he attempted to file a complaint about Probation Officer 2’s conduct and told the complainant, “I’m going to side with him.”

Board Finding: Action Justified

Rationale: Probation Officer 1 did not recall the exact interaction with the complainant and the assessment of his clothing, as she has dealt with numerous defendants in her office over the past year. He did refer to probation records which indicated that the complainant was instructed to lift his shirt to verify the position of the waistline of the pants in order to determine if he was in violation of the Work Project dress code. The alleged act then did occur, but was lawful, justified and proper.

5. Misconduct/Retaliation – Probation Officers 1 or 2 retaliated against the complainant for filing a complaint by reassigning his work assignment.

Board Finding: Not Sustained

Rationale: Probation Officer 1 reported that she reassigned the complainant’s work site in order to avoid any additional confrontations or problems between the complainant and Probation Officer 2, and not in retaliation for the complaint against her. Reassignment was considered the more appropriate solution than potential termination from the Work Project Program. There is insufficient evidence to prove or disprove the allegation.

6. Discrimination/Race – Probation Officers 1 or 2 harassed the complainant because he is Hispanic.

Board Finding: Unfounded

Rationale: Probation Officers 1 and/or 2 reported that the Work Project rules and regulations apply to everyone and are race and gender neutral. There are no indications that their interaction with the complainant was racially motivated or was harassing in nature. Moreover, the complainant failed to provide any specific examples to support his contention of discrimination. The evidence shows that the alleged act or conduct did not occur.

10-071

1. Misconduct/Procedures – Deputy 1 lost or retained the complainant’s valuable personal belongings.

Board Finding: Sustained

Rationale: Sheriff’s records documented that the complainant’s personal property was not returned upon release, and County Claims paid just under \$16,000 in compensation. By policy, valuables are heat-sealed and processed for safe-keeping through detentions facility staff, while under the control of the Sheriff’s Department. Deputies do not normally handle inmate property at any step during this process, however, the investigation was inconclusive as to who was responsible for the loss of property. The offender, whether intentional or not, could have only been a Sheriff’s employee (either sworn or non-sworn), and the evidence supports the allegation that the act or conduct was not justified.

2. Misconduct/Procedure – Deputy 1 failed to return the complainant’s out-of-state driver’s license as required by law.

Board Finding: Summary Dismissal

Rationale: The Interstate Drivers License Compact (DLC) revolves around the concept that every driver in the country has a single driver’s license and a single driving record. States belonging to the Interstate Drivers License Compact, including both California and Florida, report driving arrests (including DUIs) to each other. The complainant stated his license was never returned. CHP could have legally confiscated the license upon arrest, but it is unknown if they took control, maintained control, and/or turned over control at the detention facility. Although the complainant’s personal items were not returned upon his release, personnel responsible for this issue are believed to be non-sworn staff and/or members of a law enforcement agency over who CLERB does not have authority.

10-074

1. Misconduct/Procedure – Deputy 1 failed to seek medical attention for the complainant upon his report of being ill.

Board Finding: Sustained

Rationale: Deputy 1 did not notify on-duty medical staff of the complainant’s request for medical care. Deputy 1 referred the complainant to sick call rather than comply with Department Policies and Procedures M.5 and M.15, which state that serious medical complaints that are believed to be non-life threatening, are to be referred to medical staff immediately. The evidence supports the allegation and the act or conduct was not justified.

2. Misconduct/Procedure – Deputy 2 failed to seek medical attention for the complainant upon his report of being ill.

Board Finding: Not Sustained

Rationale: Deputy 2 had no recollection of having contacted the complainant on the night in question. There is insufficient evidence to either prove or disprove the allegation.

10-076

1. Misconduct/Procedure – Deputy 1 made a sarcastic comment to the complainant over the intercom for which the complainant was subsequently punished.

Board Finding: Summary Dismissal

Rationale: The complainant failed to maintain contact with CLERB after his release from local custody and his current whereabouts are unknown.

2. Misconduct/Procedure – Deputy 2 “tricked” the complainant into waving his right to speak to a sergeant about the incident.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 1 got “loud” with the complainant while he was serving breakfast sacks.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

10-079

1. Misconduct/Discourtesy – Deputy 1 yelled profanities at the complainant while waiting at a traffic signal.

Board Finding: Summary Dismissal

Rationale: The following CLERB Rules & Regulations apply to this incident: 4.1, Citizen Complaints: Authority and 4.2, "Misconduct". The rules require that the alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a specific citizen arise out of the performance of the Peace officer's or custodial officer's official duties or while under the exercise of Peace officer authority. Deputy 1 was off-duty at the time of the incident and therefore the Review Board lacks jurisdiction.

2. Criminal Conduct – Deputy 1 made an abrupt lane change, cut in front of, and then abruptly braked her vehicle in front of the complainant's vehicle.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Criminal Conduct – Deputy 1 sharply swerved her vehicle into the complainant's vehicle causing a collision, and then fled the accident scene for approximately 4-5 blocks.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Intimidation – Deputy 2 pounded on the complainant's window, identified himself as a police officer, and ordered her to do as he said.

Board Finding: Not Sustained

Rationale: Deputy 2 was a passenger in a personal vehicle driven by an off-duty deputy. After the incident in question, both deputies identified themselves to the complainant as law enforcement. Deputy 2 denied all other aspects of this allegation. Other on-scene witnesses identified by the complainant were not present during the exchange between the complainant and Deputy 2. There was insufficient evidence to either prove or disprove the allegation.

10-082

1. Misconduct/Procedure – P.O. 1 said to the complainant regarding her daughter, "I will not grant another pass," "I don't give second chances and "She will never leave San Diego while I am in charge," which negates the primary mission of the Probation Department.

Board Finding: Not Sustained

Rationale: P.O. 1 denies that he made these statements alleged by the complainant, admitting only that he reported to the complainant that the aggrieved's travel pass would be rescinded due to her violation of a probation condition. There is insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – P.O. 1 used information supplied by the complainant to lure the aggrieved to his office to arrest her for a probation violation.

Board Finding: Action Justified

Rationale: P.O. 1 used information supplied by the complainant and the aggrieved which caused concern for the aggrieved's health and welfare. The aggrieved was directed to report to the Hall of Justice where she was taken into custody for her safety. The evidence shows the alleged act or conduct did occur, but was lawful, justified and proper.

10-085

1. False Arrest – Deputy 1 arrested the complainant for “knowingly and willingly” violating a restraining order.

Board Finding: Action Justified

Rationale: Deputy 1 arrested the complainant for violating a valid restraining order. The complainant acknowledged being aware that a restraining order was in place prohibiting him from being within 100 yards of his wife. He deliberately attended a meeting that he knew or should have known his wife would attend, thereby leaving Deputy 1 no recourse but to arrest him for violation of PC 273.6 (A). The evidence shows the alleged act did occur, but was lawful, justified and proper.

2. Misconduct/Procedure - Deputy 1 placed the complainant in handcuffs in front of his children and other members of the community at a soccer game.

Board Finding: Action Justified

Rationale: Deputy 1 contacted the complainant and requested him to walk toward his patrol car, away from the children and their parents. The complainant was detained, uncuffed in the back of Deputy 1’s patrol car, and after verifying that he had violated a valid restraining order, the complainant was arrested and handcuffed while seated in the patrol car. The actions of Deputy 1 were lawful, justified and proper.

3. Excessive Force/Other - Deputy 1 threw a league official “up against a deputy’s car” and told him he was “half arrested.”

Board Finding: Unfounded

Rationale: Deputy 1 denied throwing anyone against a deputy’s car or stating to anyone that they were “half arrested.” He further denied observing any deputies on scene commit these acts. Moreover, the league official denied that any of these acts occurred, stating that Deputy 1 conducted himself appropriately and professionally throughout their contact. The evidence shows that the alleged act or conduct did not occur.

10-086

1. False Arrest – Deputy 1 arrested the complainant on December 15, 2009 for no reason.

Board Finding: Action Justified

Rationale: Deputy 1 responded to a request for service at a local book store where the complainant had been observed causing a scene and yelling threats to patrons. The complainant was detained under Welfare & Institutions Code 5150 and transported to Sharp Grossmont Hospital for evaluation. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

2. Illegal Search & Seizure – Deputy 4 went to the complainant’s residence uninvited and broke his lock to gain entry on March 3, 2010.

Board Finding: Action Justified

Rationale: Deputy 4 was dispatched to the complainant’s residence to investigate an incident between the complainant and a neighbor. The complainant refused to unlock his gate to allow deputies entry. Deputies 3 and 4 believed the complainant’s behavior warranted taking him into custody because he was considered a danger to himself or others, and was gravely disabled. Deputy 4 cut the padlock on the gate to gain entry to the premises because the complainant was aware of the Deputy Sheriff’s identities and had demonstrated that he did not intend to cooperate. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

3. Excessive Force – Deputies 3 and 4 wrestled the complainant to the ground and bloodied him in the process on March 3, 2010.

Board Finding: Action Justified

Rationale: Deputy 3 used force to assist Deputy 4 in gaining control of the complainant. The complainant had put himself in a fighting position and verbally challenged the deputies. Because the complainant refused to comply with orders and was assaultive Deputy 4 used a front kick to the complainant's abdominal area which provided Deputies 3 and 4 the opportunity to take the complainant to the ground, handcuff him, and take him in to custody. The evidence shows the alleged act or conduct did occur but the force used was lawful, justified and proper.

4. False Arrest – Deputy 3 arrested the complainant on March 3, 2010 for no reason.

Board Finding: Action Justified

Rationale: Deputy 3 responded to a call about a man on his patio yelling threats at his neighbors. Deputies 3 and 4 believed the complainant's behavior warranted taking him into custody because he was considered a danger to himself or others, and was gravely disabled. After gaining entry into the complainant's patio he was detained under Welfare & Institutions Code 5150 and transported to Sharp Grossmont Hospital for treatment and evaluation. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

5. Illegal Search & Seizure – Deputy 2 went to the complainant's residence uninvited and broke his lock to gain entry on May 11, 2010.

Board Finding: Action Justified

Rationale: Deputy 2 was dispatched to investigate a report of the theft of landscaping equipment which was visible in the complainant's patio. The complainant refused to unlock his gate to allow deputies entry. Deputies Clark and 4 believed the complainant's behavior warranted taking him into custody because he was considered a danger to himself, others, and was gravely disabled. The complainant was aware of the Deputy Sheriff's identity and had demonstrated that he did not intend to cooperate. Deputy 2 cut the padlock on the gate to gain entry to the premises. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

6. Excessive Force – Deputies 2 and 4 wrestled the complainant to the ground and bloodied him in the process on May 11, 2010.

Board Finding: Action Justified

Rationale: Deputy 2 used force to assist Deputy 4 in gaining control of the complainant. As deputies entered the patio the complainant took up a fighting stance, held keys between his fingers as with brass knuckles, and extended his arm out as if to punch at Deputy 4. Deputy 4 used a front kick to the complainant's abdominal area which provided Deputies 2 and 4 the opportunity to gain control, handcuff him, and take him in to custody. The evidence shows the alleged act or conduct did occur but the force used was lawful, justified and proper.

7. False Arrest – Deputy 4 arrested the complainant on May 11, 2010 for no reason.

Board Finding: Action Justified

Rationale: Deputy 4 responded to a call about a man on his patio yelling at his neighbors. Deputies 2 and 4 believed the complainant's behavior warranted taking him into custody because he was considered a danger to himself, others, and was gravely disabled. After gaining entry into the complainant's patio he was detained under Welfare & Institutions Code 5150 and transported to Sharp Grossmont Hospital for treatment and evaluation. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

10-088

1. Illegal Search & Seizure – Deputy 3 broke into the complainant's residence on April 4, 2010, without a warrant.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety

Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. False Arrest – Deputies 1 and/or 3 arrested the complainant's son for possession of a pocket knife, which the children used for protection and first aid in a remote area.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Illegal Search & Seizure – Deputies 1 and/or 3, both males, patted down and/or searched the complainant's minor daughter.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Discourtesy – Deputies 1 and/or 3 spat in the aggrieved's face and threateningly shouted "foul language".

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Intimidation – Deputies 1 and/or 3 told the aggrieved, "If you say anything else, I'm going to smash your face into the ground."

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Discrimination/Racial – Deputies 1 and/or 3 made racial comments to the aggrieved implying the kids were criminals because of gang-related clothing and skin color.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

7. False Reporting – Deputies 1 and/or 3 made false allegations against the aggrieved and "changed their stories," regarding drug paraphernalia and a concealed weapon.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Illegal Search & Seizure – Deputy 3 searched a storage trailer on the complainant's property without a warrant on September 7, 2010.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

9. Misconduct/Procedure – Deputy 2 was rude to the complainant, refused to identify arresting deputies, and also refused to provide a complaint form to her.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

10. Misconduct/Procedure – Deputy 3 refused to provide their names/badge numbers upon request.

10-091

1. Misconduct/Procedure – Deputy 1 improperly placed the aggrieved into solitary confinement after his life was threatened.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 only allowed the aggrieved telephone privileges between 12-3 a.m., which prohibited access to legal counsel.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 1 failed to protect and/or take action with regard to the theft of the aggrieved's telephone pin number stolen by other inmates.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 1 failed to provide complaint forms to the aggrieved upon request.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Discourtesy – Deputy 1 use profanity and/or racial slurs against inmates.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Retaliation – Deputy 1 retaliated against the aggrieved in response to complaints against them.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

10-096

1. Misconduct/Procedure – Deputy 1 failed to properly investigate an allegation of sexual assault against the complainant.

Board Finding: Action Justified

Rationale: Deputy 1 investigated the allegations against the complainant over an 11 month period, interviewing more than 23 witnesses and victims. The results of his investigation led to the issuance of a felony warrant for the complainant's arrest and subsequent conviction on 10 counts, including the sexual assault charge that is the subject of this complaint. The evidence shows the alleged act or conduct did occur, but was lawful, justified and proper.

2. False Arrest – Deputy 1 arrested the complainant for receiving stolen property.

Board Finding: Action Justified

Rationale: Deputy 1 arrested the complainant for an outstanding felony warrant on the charge of assault with intent to commit rape. At the time of his arrest and during the subsequent search of his apartment, the complainant was found to be in possession of several stolen prescription medications. The evidence then shows that the alleged act or conduct did occur, but was lawful, justified and proper.

3. Misconduct/Procedure - Deputy 1 failed to arrest the person who actually stole and provided the property to the complainant.

Board Finding: Action Justified

Rationale: Deputy 1 interviewed the person who had allegedly stolen the prescription medication, as well as their employer. The results of his investigation failed to yield sufficient evidence to charge this person with a crime. Moreover, it was determined that the complainant had access to these medications while visiting the alleged perpetrator at their work site and may have personally taken them at that time. The evidence then shows that the alleged act or conduct did occur, but was lawful, justified and proper.

11-041

1. Misconduct/Procedure – Probation Officer 1 would not take any information concerning a registered sex offender residing with children in his household and in close proximity to a school.

Board Finding: Action Justified

Rationale: Probation Officer 1 properly documented the telephone contact concerning a registered sex offender and took appropriate action consistent with Probation Department Policy and Procedures. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Probation Officer 1 refused to provide information to the complainant to acknowledge or deny that the registered sex offender was violating terms of probation.

Board Finding: Action Justified

Rationale: Probation Officer 1 did not disclose to the complainant any information concerning the registered sex offender's probation terms. Disclosure of information would have violated Probation Department Policies and Procedures. The evidence shows that the alleged act or conduct did occur but was lawful, justified, and proper.

11-075

1. Death Investigation - Deputy 1 found inmate Marion Michelle Lopez unresponsive during a security check at the Vista Detention Facility.

Board Finding: Action Justified

Rationale: Upon discovery of a non-responsive inmate, Deputy 1 requested medical assistance and life-saving measures were initiated until Lopez was pronounced deceased. The Medical Examiner determined Lopez died of respiratory failure with gastric respiration due to heroin withdrawal syndrome. Toxicology tests were positive for methadone, methamphetamine, morphine, 6-monoacetylmorphine, and cannabinoids. There was no complaint or evidence of misconduct or a failure to act by any Sheriff's Department personnel.

11-081

1. Misconduct/Harassment – Deputy 1 made harassing phone calls to the complainant's cell phone.

Board Finding: Summary Dismissal

Rationale: It was determined that the phone calls in question were initiated by an automated telephone operated by the San Diego County Library. County Information Technology officials believe the source of the calls was a corrupt file for the Alpine Branch of the San Diego County Library. The file has been replaced and test calls have been successful. Library officials do not fall within CLERB's jurisdiction. CLERB does not have authority to investigate this complaint based upon CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties and Responsibilities of Review Board.

2. Misconduct / Harassment – Deputy 2 made harassing phone calls to the complainant's cell phone.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

11-096

1. False Arrest – Deputy 1 sent a warrant to North Carolina where the complainant was arrested and held for 30 days.

Board Finding: Summary Dismissal

Rationale: The personnel identified as being involved in this matter are Judges, officers of the San Diego Police Department and/or non-sworn members of the Sheriff's Department, over which CLERB has no authority. CLERB Rules & Regulations 4.1 states the Review Board shall only have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. The Review Board lacks jurisdiction.

2. False Arrest – Deputy 1 sent an extradition warrant to North Carolina when the complainant was due to be released.

Board Finding: Summary Dismissal

Rationale: See Rationale #1

11-102

1. Excessive Force – Deputy 1 used unnecessary force on the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant was arrested by the Chula Vista Police Department. CLERB does not have authority to investigate this complaint based upon the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties, and Responsibilities of Review Board, Section 9: Screening of Complaints, and Section 15: Summary Dismissal.

2. Illegal Search or Seizure – Deputy 1 conducted an illegal search and seizure of the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.
